IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6865 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHAKTI EDUCATION TRUST - Petitioner(s)
Versus
GOVERNMENT OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR JV BHAIRAVIA for Petitioner(s) : 1,
MR RM DESAI for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 09/11/2006

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner Shakti Education Trust, who is running a secondary school namely Shakti Vidhyalaya, Chandlodiya, Ahmedabad has prayed for an

appropriate writ, direction and/or order quashing and setting aside the order passed by the District Education Officer, Ahmedabad Rural dated 8-5-1996 in not granting approval to dismiss the respondent No.3 from service.

2. Respondent No.3 was serving as a Teacher in the school run by the petitioner trust namely Shakti Vidhyalaya, Chandlodiya, Ahmedabad. She was charge sheeted by show cause notice dated 8-9-1995. Having not submitted any reply to the said show cause notice, Inquiry Committee was appointed on 24-9-1995 as required under section 36(1) of the Gujarat Secondary Education Act (for short “the Act”). Inquiry Committee submitted its report on 9-1-1996 holding all the charges proved against the respondent No.3 and decided to dismiss the respondent No.3 from service, however, approached the District Education Officer, Ahmedabad Rural for its approval as required under section 36 of the Act. Though the District Education Officer concurred with the finding of the Inquiry Committee, however, taking a lenient view and by observing that one more chance be given to the respondent No.3, refused to accord the approval and rejected the proposal dated 3-2-1996 and directed to treat the period of absent as extraordinary leave. Being

aggrieved by the same, the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India.

3. Though served, nobody appears on behalf of respondent No.3.

4. This Court has gone through the memo of petition as well as Inquiry Committee's report, the charges levelled against the respondent No.3 and the impugned order passed by the District Education Officer, Ahmedabad Rural dated 8-5-1996. The charge proved against the respondent No.3 was that she remained absent since 15th June 1994 and in spite of repeated notices to remain present, she did not resume duty. Thus, she remained absent for more than 10 months. She was required to examine the necessary papers in the subject of Sanskrit which was final examination on 18-4-1995 and was required to examine the answer papers on or before 4-5-1995. However, only 23 necessary papers were examined and the remaining answer papers were required to be examined by other teachers and therefore, the result was delayed. There were other charges also which were proved and considering the charges proved against the respondent No.3, a decision was taken to

dismiss the respondent No.3. However, in view of provision of section 36 of the Act, the same was sent to the District Education Officer, Ahmedabad Rural for its approval. On going through the order passed by the District Education Officer, the District Education Officer has not disagreed with the finding. He has also not disagreed with the fact that the respondent No.3, the teacher was absent since 21-6-1994 and got her leave sanctioned upto 25-1-1995 and thereafter no leave has been sanctioned. What is weighed with the District Education Officer is the explanation and/or the absence of respondent No.3 that she was not mentally fit and due to illness, she remained absent and/or irregular. The District Education Officer has also observed that on recovery from the illness, there are all possibilities of improving the respondent No.3. The District Education Officer has also observed that in place of respondent No.3, another teacher was appointed and therefore, the education of the students was not affected. The District Education Officer has not properly appreciated the fact that when a teacher, more particularly, the language teacher in the present case Sanskrit which is considered to be a specialized subject, remained absent for more than 10 months, then what will be the effect upon the

education of the students. Because the management has made some alternative arrangement, the misconduct on the part of the respondent No.3 was not required to be considered lightly. It is also required to be noted that one of the charge levelled against the respondent No.3 and which is proved is that some answer papers in the subject of Sanskrit were given to respondent No.3 for the purpose of examination, which was a final examination, still the respondent No.3 examined only few answer papers and the other answer papers of the students were got examined by another teacher and therefore, there was a delay in declaring the result. Therefore, the District Education Officer while refusing to accord approval, has shown undue and unwarranted sympathy. The reasons given by the District Education Officer in not granting the approval are not germane and not in accordance with law.

5. At this stage, the scope of the powers of the District Education Officer under section 36 of the Act is also required to be considered. Relevant provision of section 36 reads as under:

> ***Section 36(1)*** *No person who is appointed as a headmaster, a teacher or a member of non-teaching staff of a registered private secondary school shall be dismissed or removed or reduced in rank nor shall*

his service be otherwise terminated by the manager until-

(a) he has been given by the manager a reasonable opportunity of showing cause against the action proposed to be taken in regard to him, and

(b) the action proposed to be taken in regard to him, has been approved in writing by an officer authorised in this behalf by the Board:

Provided that nothing in this sub-section shall apply to any person who is appointed for a temporary period only.

The main object of section 36 and to obtain approval of the District Education Officer before dismissing the employee seems to be that the teacher/employee is not unnecessarily harassed and the District Education Officer is required to consider whether the teacher is likely to be removed/dismissed mala fide and/or with ulterior motive or not. Once the charges are proved by Inquiry Committee constituted under section 36 of the Act, normally the District Education Officer is required to accord approval and is not required to show undue sympathy and/or gone into legality and validity of the report of the Inquiry Committee, which is otherwise in accordance with law and not suffering from vice of arbitrariness and/or mala fide. The District Education Officer is not required to refuse approval at his sweet

Will.

6. Now considering the above and the charges levelled against the respondent No.3, which are held to be proved, conduct of the respondent No.3, the teacher and the interest of students, the District Education Officer has committed an error in refusing to accord the approval and has not exercised the powers which were required to be exercised considering the scope of section 36 which is discussed hereinabove.

7. Under the circumstances, the order passed by the District Education Officer in refusing to accord approval for dismissal of respondent No.3 requires to be quashed and set aside and is hereby quashed and set aside. Rule is made absolute to the aforesaid extent. No costs.

(M.R.SHAH,J.)

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